

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

June 6, 1984

LEGISLATIVE REFERRAL MEMORANDUM

LEGISLATIVE LIAISON
84-3081

TO: LEGISLATIVE LIAISON OFFICER

SEE ATTACHED DISTRIBUTION

SUBJECT: GSA draft testimony on S. 2127, the "Federal Advisory Committee Act Amendments of 1983"

*per phone call
to OMB, stated
GSA had "no
comment" since
CIA exempt from
Act under
§4(b)(1)
[attached]
RJD
6/8/84*

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than COB Friday, June 8, 1984. This is a firm deadline. (Note: A hearing is scheduled for 6/12/84. In keeping with earlier comments on a GSA report on this bill, we anticipate the testimony will be changed to oppose the bill.)

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

[Signature]
James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

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S. 2127GSA C it t Statement

Good morning Mr. Chairman and members of the Committee. It is my pleasure to appear before you this morning to discuss the Federal advisory committee program, for which the General Services Administration (GSA) has oversight responsibility within the Executive branch.

During the past three years, GSA has played an active role in promoting greater efficiency and accountability in the use of Federal advisory committees. Central to this effort has been the implementation of a new interim rule in April of 1983 which spells out numerous actions that can be taken by Federal agencies to improve advisory committee management. GSA believes, for example, that top agency officials should communicate carefully with their committee members to help them understand the mission of the committee, and should solicit and review member comments about the committee's management, achievements, and efficiency. Those who serve as committee members should be made to feel that their time has been spent in performing meaningful public service, and that their advice will be seriously considered by agency policy-making officials.

GSA has also been concerned about Federal expenditures and has identified ways to achieve meaningful cost savings in the advisory committee program. Since 1980, Federal agencies have reduced overall advisory committee costs from \$87 million to \$75.8 million in Fiscal Year 1983, a 13 percent savings. Yet, the number of committees and committee meetings have been their highest level in recent years, meaning that agencies are doing

more with less. Nevertheless, the efficiency of advisory committee costs, management, and reporting varies from agency to agency, and additional improvements can and should be made.

One area where significant additional cost savings can be achieved is by encouraging voluntarism for advisory committee service. In Fiscal Year 1983, nearly 70 percent of the 21,000 citizens who served on Federal advisory committees did so on a voluntary noncompensated basis. Of the 7,000 persons who were compensated, 80 percent served on advisory committees of four agencies which have followed a policy of universal compensation of their committee members.

GSA has sought to correct this situation by including a provision in the interim rule which requires agencies to seek qualified volunteers to serve on their committees. Of course, compensation can be paid on an exception basis to assure that no citizen is denied the opportunity to serve because of financial considerations, and to obtain the services of special experts with unique qualifications who otherwise might not be available. Such persons can be hired as consultants and appointed as committee members.

A Government-wide policy on compensation assures greater fairness in the treatment of citizens who serve as committee members. And, since compensation amounted to \$5 million in Fiscal Year 1983, or 7 percent of the total program cost, full implementation of a "no compensation" policy could save millions of dollars for American taxpayers. Although some agencies have

objected to this effort, there are many examples where the GSA rule on compensation is working and having the desired effect, without harming committee operations.

The GSA rule achieves a policy objective of the President who in public statements and official proclamations has promoted the use of voluntarism. In a message declaring May 6-12, 1984, "National Volunteer Week," the President said in part, "The record of achievement and the private sector working together inspires us to look to this source of strength in pursuing worthy goals in the future."

In addition to promulgating a new rule, GSA has sought to strengthen committee management by completely revamping and expanding the annual report of the President which is submitted to the Congress. For the first time last year, the annual report contained narrative, charts, and analysis of advisory committee activities and expenditures beyond the cursory summary data provided in previous years. As a result of this approach to the report, an interest in the advisory committee program came from the Congress, the media, the public, and Federal agencies. Senator Nickles was among those who read the report carefully, and he took a position of leadership in questioning committee activities, necessity, and expenditures.

Because of his interest and his expression of support for the President's and GSA's committee management initiatives, the Senator introduced the legislation which is the subject of today's hearing. In essence, S. 2127 seeks to incorporate into

the Federal Advisory Committee Act many of the management initiatives found in the GSA interim rule.

GSA supports the purpose of S. 2127, but we would recommend that S. 2127 be simplified of some of its detail to separate out what best can be accomplished by administrative regulation.

GSA, in the annual report and in other communications, has identified several areas of the advisory committee program where the Congress may wish to devote its attention. The most basic issue is the definition of an advisory committee. GSA has attempted to clarify some of the "gray areas" of the definition through its interim rule. However, the legislative history accompanying the Federal Advisory Committee Act, as well as recent court cases, leave agencies, the public, and GSA in its oversight capacity with a sense of uncertainty whether certain meetings fall under the Federal Advisory Committee Act. Federal officials have been sued for holding single meetings which the courts have subsequently interpreted to be advisory committee meetings.

Concurrent with the problem of the definition of a committee is the administrative burden placed on an agency to hold a meeting. The process of setting up a committee and giving sufficient advance notice of a meeting can consume weeks of time, a circumstance which poses a dilemma to an agency requiring quick response or resolution of a problem. Agencies are sometimes forced to choose between being thorough and being responsive-- they must forego access to expertise and advice from private

citizens, or they must seek some means to obtain the advice in a manner placing them at risk of violating the spirit if not the letter of the Federal Advisory Committee Act.

Congress should also give attention to eliminating defunct advisory committees created by statute which agencies must continue to report and account for each year, and which by their continued presence contribute nothing except to increase the administrative costs of the Federal advisory committee program. In its most recent survey, GSA has identified 47 advisory committees which agencies propose to terminate but which require legislation^e to do so. Agencies have made specific proposals to the Congress for some of these committees, but have simply given up in several cases where past recommendations to the Congress have gone unheeded. ✓

In summary, the Federal advisory committee program is a source of great benefit to the Federal Government and to the American people by providing access to a wide range of expertise in the private sector which can be used effectively to help solve problems and make tremendous contributions to the well being of all citizens. GSA has attempted to highlight recent accomplishments and to identify several areas where the Congress may wish to take action. We appreciate very much the opportunity to share these comments, and we are prepared to lend our full assistance to those efforts that will further improve the Federal advisory committee program.

§ 3**Note 4****4. Agency**

National Academy of Sciences is not an "agency" within this appendix, requiring certain publicity of committee meetings, and its committee on motor vehicle emissions is not an "advisory committee" either as a committee established by statute or one established or utilized by the Environmental Protection Agency. *Lombardo v. Handler*, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 53 L.Ed.2d 248.

5. Exemptions

In order to be exempt from requirements of the Federal Advisory Committee Act, this Appendix, as a state or local committee, a group must show that it is a state or local committee and that it was established to advise or make recommendations to state or local agencies. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

By creating exception to the Federal Advisory Committee Act, this Appendix, for state and local committees, Congress intended to include state and local committees under this Appendix only when they function at the federal level. *Id.*

§ 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§ 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

- (1) contain a clearly defined purpose for the advisory committee;
- (2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by

TITLE 5—APPENDIX 2

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American Association of State Highway and Transportation Officials, an organization which is national in scope, whose purpose is to foster the development of a nationwide, integrated transportation system, whose bylaws charge its policy committee with preparing official presentation on legislative proposals, and whose representatives regularly testify before Congress, is not exempt from requirements of the Federal Advisory Committee Act, this Appendix on the theory that it is a state or local committee. *Id.*

Exemption from requirements of this Appendix where committee is composed wholly of full-time officers or employees of the federal government did not apply to committee of state and federal employees. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Exclusion from requirements of this Appendix provided for the Advisory Commission on Intergovernmental Relations was not available to shade organization consisting of representatives of state highway and transportation departments and officials of the United States Department of Transportation from requirements of this Appendix. *Id.*

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(3) contain appropriate provisions of the advisory committee appointing authority or by the advisory committee's independent

(4) contain provisions dealing with submission of reports (if the publication of reports an committee determines the procedure

(5) contain provisions which adequate staff (either supplied adequate quarters, and will expenses.

(e) To the extent they are applicable this section shall be followed by officials in creating an advisory committee

Code of Federal Regulations

Committee management regulations—
Consumer Products Safety Commission
16 CFR 1018.1.
Department of Agriculture, see 7 C.F.R.
Department of Education, see 34 C.F.R.
Department of Health and Human Services
see 45 CFR 11.1.
Federal Emergency Management Agency
44 CFR 12.1.
Marine Mammal Commission, see 510.1.
Nuclear Regulatory Commission, see 7.1.

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1. Standing to sue

In action for declaratory and injunctive relief alleging that National Petroleum Council subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influencing certain petroleum industry special interests contrary to requirements of this section as provided in Energy Administration Act provision, 5 U.S.C. § 552, of Title 15, plaintiffs' allegations of themselves as consumers: anticipated harm for petroleum products; potential environmental damage and threats to health and safety; anticipated denial of benefits from development of alternative sources of energy, did not constitute standing to sue upon plaintiffs, particularly the fact that there was no nexus between alleged injuries and defendants' challenge. *Metcalf v. National Petroleum Council*, 1976, 407 F.Supp. 257, affirmed 553

In action by United States Senator against National Petroleum Council and its subgroups because they were not fully balanced in membership and were improperly influencing petroleum industry special interests, plaintiffs do not have standing to sue on theory that their actions had affected effectiveness of this Appendix and Federal Energy